

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
TRENTON DIVISION**

CHARLES NOVINS, ESQ.

P.C. and CHARLES NOVINS Personally

Plaintiff,

versus

KEVIN A. CANNON , et al.,

Defendants.

) Case No. 3:09-cv-05354-AET-DEA
)
) Courtroom No. 6W
) Clarkson S. Fisher Building
) & U.S. Courthouse
) 402 East State Street
) Trenton, New Jersey 08608
)
) May 27, 2011
) 11:05 A.M.

TRANSCRIPT OF TELEPHONE CONFERENCE HELD RE: FINAL
PRETRIAL ORDER.

BEFORE HONORABLE DOUGLAS E. ARPERT
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

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Richard Vince Lamb:

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For Defendants,
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and Yvonne Osterwald:

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1 TRENTON, NEW JERSEY FRIDAY, May 27, 2011 11:05 A.M.

2 (Call to order of the Court)

3 THE COURT: Hello.

4 MULTIPLE SPEAKERS: Good morning, Judge.

5 THE COURT: This is the matter of Novins versus
6 Cannon, et al., 09-5354, it's Judge Thompson's case. It's
7 scheduled for trial on June 1st.

8 First, the parties were before me on Tuesday of this
9 week, that would have been the 24th of May. I directed counsel
10 at that time to confirm and submit a revised form of final
11 pretrial order by yesterday afternoon, May 26th. I did not
12 receive a joint final pretrial order. Rather what I received
13 is a revision of the submission that was sent to me earlier in
14 the week based upon the collaborative efforts of defense
15 counsel.

16 With that predicate, I'll have your appearances,
17 please, for plaintiff?

18 MR. NOVINS: Yes, Judge, this is Charles Novins.

19 MR. MANZO: Joseph Manzo on behalf of -- well, Kevin
20 Cannon, Carl Osterwald and Yvonne Osterwald.

21 MR. DUNCAN: Dennis Duncan on behalf of Richard Vince
22 Lamb.

23 THE COURT: Okay. Mr. Novins, based on the letter I
24 got from Mr. Manzo, I take it that you did not participate in
25 the preparation of the pretrial order that I received

1 yesterday.

2 MR. NOVINS: Judge, yes, but the letter is, at
3 minimum, misleading. Let me just fill in the blanks, if I may,
4 for Your Honor. During -- yesterday I prepared a pretrial
5 order. And what had happened is that Mr. Manzo had sent me his
6 exhibit list, and all of the subheadings filled in with respect
7 to the order previously. And you asked me to synthesized what
8 he sent -- synthesized what Mr. Duncan had sent and put
9 together a single order.

10 Now, what I did was I put all that together into a
11 single order, and I did it. Mr. Manzo emphasized that he
12 didn't want any changes to what he had given to me. And I
13 didn't, I used cut and paste. So, this is an incident where --
14 an example where every single dot, period, comma, everything,
15 just carried over. I changed nothing of his text. I put them
16 into the appropriate headings and did them, as well as Mr.
17 Duncan.

18 In addition, I was calling Mr. Duncan all day
19 yesterday on the phone. We conferred at least two or three
20 times. He had some extra exhibits, new exhibits he wanted to
21 add on; I accommodated him with that.

22 And I also had a couple of things I didn't see in my
23 e-mail that were areas of the memo that I thought he wanted to
24 supplement, and I couldn't find them. So, as I said, he had
25 specifically directed us to add. So, I asked him to give them

1 to me; he did. I put those in. I put it all together.

2 Then I sent it -- I had -- but I court, but I -- as I
3 was leaving, I had my secretary -- first I signed the signature
4 page, I sent it to both counsels. And, again, nothing changed
5 from what Mr. Manzo had.

6 I added and deleted my language. For example, the
7 third party defendant topic in your memo obviously had no
8 application here; I took that out.

9 And with respect to the length of trial, Mr. Manzo --
10 I, word-for-word, put in his statement that his case in chief
11 would be three days. And I added that in the whole afterwards,
12 all attorney -- all the attorneys had met, and we had pretty
13 much agreed that the length of the entire trial -- its outer
14 limits would probably be six. So, I added that language of my
15 own.

16 But other than that, all of my exhibits were
17 identical to the ones I sent. I didn't change my exhibit list
18 at all. And I then sent it over to the other attorneys.

19 And then I get this letter from Mr. Manzo that Mr.
20 Novins did nothing, and so on and so forth. But nothing can be
21 further from the truth.

22 And the memo you did get this morning, I see, has
23 removed or redacted my exhibits, and my language, and so on.
24 Whereas the memo I sent to them, as they well know, has all
25 three attorneys, with me signing it, and sending it to them

1 just for a signature.

2 MR. DUNCAN: Judge, can I respond now?

3 THE COURT: Please.

4 MR. DUNCAN: Your Honor, Mr. Novins did call me. But
5 what appears to have happened is Mr. Novins was not working off
6 the document we sent him on Monday. And he created some
7 document -- he kept calling me and asking me for things. And I
8 kept saying, "Mr. Novins, that's on Page 18, Paragraph 2."
9 "Well, I don't have it." So, then I sent it.

10 Then he told me there wasn't a section on damages. I
11 said, "That's on Page -- whatever -- 23, third paragraph." I
12 sent it to him.

13 And then when I did mention that one of my -- one of
14 my exhibits -- the number sequencing was wrong, I did add one
15 exhibit, but that was in response to what he produced on
16 Tuesday.

17 So, it's the same exact thing. What me and Manzo
18 submitted, it's the same document that you had on Monday. He
19 -- all he's doing is playing games, Your Honor. I mean we --
20 we have to start prepping for this trial. I mean we -- this is
21 getting ridiculous. The trial's on Wednesday.

22 THE COURT: I'm entering the order which was
23 submitted under Mr. Manzo's letter to me of May 26th, 2011 as
24 defendant's final pretrial order. You'll appear before Judge
25 Thompson on Wednesday morning to start trial. I'm going to

1 provide her with a copy of this order.

2 Mr. Manzo, you and Mr. Duncan can make whatever
3 application you believe is appropriate before Judge Thompson
4 based on Mr. Novins' either failure to or lack of participation
5 in the process. And Judge Thompson will decide what remedy is
6 appropriate as she begins trial.

7 But as I see it right now, the order contains no
8 exhibits for Mr. Novins, contains no stipulated facts as to Mr.
9 Novins, and no other articulated legal positions as to Mr.
10 Novins, or at least from his perspective.

11 So, Mr. Novins, we'll see you on Wednesday morning.
12 Gentlemen, I'll see you on Wednesday morning, and you should be
13 prepared to step off with Judge Thompson.

14 MR. NOVINS: Your Honor, I will do that but --

15 MR. DUNCAN: Thank you, Your Honor.

16 MR. NOVINS: -- I would request your permission to at
17 least forward to you the memo I presented and sent to them,
18 which was as far as I was concerned.

19 THE COURT: You can forward whatever you'd like, Mr.
20 Novins.

21 MR. NOVINS: Okay.

22 THE COURT: But this is going to go on the docket as
23 defendants' final pretrial order. And if you have another
24 version of it that you believe was not submitted to the Court,
25 I'll leave it to you to decide how you're going to handle it.

1 But Mr. Duncan's point is well taken. We've spent enough time
2 dancing around one another on the fundamentals here, and this
3 case is going to trial on Wednesday.

4 MR. MANZO: And, Judge, if --

5 MR. NOVINS: Thank you, Your Honor.

6 MR. MANZO: This is Joseph Manzo. Just -- if I might
7 just add to you, Judge, about what Mr. Novins said. He had no
8 communication with me all day. And the first fax he did have -
9 - there were some fax problems between he and I, but he didn't
10 even attempt that fax -- and I have the failed fax here. He
11 didn't even attempt until 3:15. I remind Your Honor that it
12 was due on Your Honor's desk at 4 o'clock. That -- you know,
13 out of the 48 hours that you graciously gave us to redo this
14 thing, Mr. Novins took 47 and a quarter of them. That's just
15 unbelievable.

16 So, thank you, Judge. I appreciate your ruling.

17 THE COURT: All right. I'm going to provide Judge
18 Thompson with transcripts of today's dialogue, as well as the
19 appearance on Tuesday so she has the full benefit of the
20 history here.

21 All right, gentlemen, I'll see you next week.

22 (Whereupon, at 11:13 A.M., the hearing was adjourned.)
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CERTIFICATE

I certify that the foregoing is a correct transcript from
the electronic sound recording of the proceedings in the
above-entitled matter.

/s/ Karen Hartmann AAERT CET**D0475 Date: May 28, 2011
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